

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 1-800 REMODEL, INC.,) Case No. CV 18-02827 DDP (JEMx)
12 Plaintiff,)
13 v.) **ORDER GRANTING DEFENDANT'S MOTION**
14 ROBERT DOANE,) **TO DISMISS FOR LACK OF PERSONAL**
15 Defendants.) **JURISDICTION**
16 _____)

17 Presently before the court is Defendant's Motion to Dismiss
18 for lack of personal jurisdiction. Having considered the
19 submissions of the parties, the court grants Defendant's motion and
20 adopts the following Order.

21 **I. Background**

22 Plaintiff 1-800 REMODEL, INC. ("Remodel"), is a corporation
23 that is incorporated and has its principal place of business in Los
24 Angeles, California. (Complaint, ¶¶ 1-5, 11, 13-15, 20; Doane Decl.
25 ¶¶ 3, 6; Ex. 1 (Settlement Agreement) at 1.) Remodel is a
26 home-improvement company that provides free referral services to
27 homeowners looking to remodel. Id. Defendant Robert A. Doane
28 ("Doane") is a citizen of Massachusetts. (Compl. ¶ 6; Decl. of
Robert A. Doane ¶ 2.)

1 Prior to March 10, 2017, Doane received telemarketing calls
2 from Remodel. (Compl. ¶ 16; Doane Decl. ¶ 3; Ex. 1 at 1.) After
3 Doane complained about those calls and threatened to sue, he
4 entered into a settlement agreement with Remodel on March 10, 2017
5 ("Effective Date") to resolve his complaints (the "Agreement").
6 (Compl. ¶¶ 6, 9; Doane Decl. ¶¶ 3-4; Ex. 1 at 1.) Under the
7 Agreement, Doane released Remodel "from any and all claims,
8 demands, and causes of action . . . that [Doane] ever had, or now
9 has, or may have, whether known or unknown, that have been raised
10 or that may have been raised at any time through and up to the
11 Effective Date of this Agreement." (Ex. 1 at 2, ¶ 2.)

12 The Agreement provided that it "shall be governed
13 [by] . . . the . . . laws of . . . California . . . and the exclusive forum for any
14 litigation arising from the subject matter of this Agreement shall
15 be the federal and state courts of original jurisdiction located in
16 Los Angeles, CA." (Ex. 1 at 3, ¶ 5.) While the Agreement provided
17 for the application of California law, it did not contain any
18 waiver of Cal. Civ. Code § 1542. *Id.* at 2-4.

19 In March 2018, Doane again began to receive telemarketing
20 calls from Remodel after Doane visited a website and allegedly
21 entered his contact information and consented to receive calls from
22 home improvement partners. (Compl. ¶¶ 12-15; Doane Decl. ¶ 6.) On
23 March 13, 2018 Doane sent Remodel a pre-suit demand letter to
24 complain about the new telemarketing calls he was receiving from
25 Remodel. (Doane Decl. ¶ 7; Ex. 2 (Doane's Pre-Suit Demand Letter).) In
26 that letter, Doane identified the calls as having occurred after
27 the Effective Date of the Agreement. *Id.*

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1 Remodel then filed this action seeking a declaratory judgement
2 that any claims by Doane over Remodel's telemarketing practices, in
3 addition to any claims for breach of the Agreement, must be
4 adjudicated in California. (Compl. ¶¶ 22-35.) Defendant now moves
5 to dismiss for lack of personal jurisdiction.

6 **II. Legal Standard**

7 District courts have the power to exercise personal
8 jurisdiction to the extent authorized by the law of the state in
9 which they sit. Fed. R. Civ. P. 4(k)(1)(A); Panavision Int'l, L.P.
10 v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998). When a defendant
11 moves to dismiss under Federal Rules of Civil Procedure 12(b)(2),
12 the plaintiff bears the burden of demonstrating that the court may
13 properly exercise personal jurisdiction over the defendant. Pebble
14 Beach Co. v. Caddy, 453 F.3d 1151, 1154 (9th Cir. 2006); Bohara v.
15 Backus Hosp. Med. Benefit Plan, 390 F.Supp.2d 951, 961 (CD. Cal.
16 2005) (citing Ziegler v. Indian River Cty., 64 F.3d 470, 473 (9th
17 Cir. 1995)). Because California's long-arm statute authorizes
18 personal jurisdiction coextensive with the Due Process Clause of
19 the United States Constitution, this Court may exercise personal
20 jurisdiction over a nonresident defendant when that defendant has
21 "at least 'minimum contacts' with the relevant forum such that the
22 exercise of jurisdiction 'does not offend traditional notions of
23 fair play and substantial justice.'" See Cal. Civ. Code § 410.10;
24 see also Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797,
25 800-01 (9th Cir. 2004) (citing Int'l Shoe Co. v. Wash., 326 U.S.
26 310, 316 (1945)). The contacts must be of such a quality and
27 nature that the defendants could reasonably expect to be "haled
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1 into court there." World-Wide Volkswagen v. Woodson, 444 U.S. 286,
2 297 (1980).

3 **III. Discussion**

4 A. Specific Personal Jurisdiction

5 A district court may exercise either general or specific
6 personal jurisdiction over non-resident defendants. Fed. Deposit
7 Ins. Corp. v. British-Am. Ins. Co., 828 F.2d 1439, 1442 (9th Cir.
8 1987). A court may exercise general jurisdiction when the
9 defendant's activities within the forum state are so "continuous
10 and systematic" as to render them essentially at home in the forum
11 state. Goodyear Dunlap Tires Operations, S.A. v. Brown, 564 U.S.
12 915, 919 (2011). A court may exercise specific jurisdiction when
13 there is an affiliation between the forum and the underlying
14 controversy, i.e., an activity that takes place in the forum state
15 and is therefore subject to the state's regulation. Walden v.
16 Fiore, 571 U.S. 277, 284-85 (2014). Plaintiff does not dispute
17 that this Court does not have general jurisdiction over Doane, a
18 Massachusetts citizen. The only question, therefore, is whether
19 specific personal jurisdiction exists.

20 Courts in this circuit apply a three prong test when analyzing
21 specific jurisdiction: (1) The non-resident defendant must
22 purposefully direct his activities to or consummate some
23 transaction with the forum or resident thereof; or perform some act
24 by which he purposefully avails himself of the privilege of
25 conducting activities in the forum, thereby invoking the benefits
26 and protections of its laws; (2) the claim must be one which arises
27 out of or relates to the defendant's forum-related activities; and
28 (3) the exercise of jurisdiction must comport with fair play and

1 substantial justice. Schwarzenegger, 374 F.3d at 802. Once the
2 plaintiff satisfies the first two prongs of the test, the burden
3 shifts to the defendant to show that exercising personal
4 jurisdiction would be unreasonable. Id.

5 Under the first prong of the specific jurisdiction test, the
6 plaintiff must show that the defendant purposefully directed his
7 activities toward the forum state or purposefully availed himself
8 of the privilege of conducting activities there. Id. Purposeful
9 direction "requires that the defendant ... have (1) committed an
10 intentional act; (2) expressly aimed at the forum state; and (3)
11 causing harm that the defendant knows is likely to be suffered in
12 the forum state." Id. at 803 (quoting Dole Food Co. v. Watts, 303
13 F.3d 1104, 1111 (9th Cir. 2002)). Actions may be directed at the
14 forum state even if they occurred elsewhere. Id. However, "random,
15 fortuitous, or attenuated contacts" are insufficient to create the
16 requisite connection with the forum. Burger King Corp. v.
17 Rudzewicz, 471 U.S. 462, 475 (1985).

18 Here, Remodel argues that Doane purposefully directed his
19 activities at California by providing his contact information to a
20 third-party website and sending a demand letter to Remodel, a
21 California corporation. Remodel also contends that Doane availed
22 himself of the benefits of California law by entering into the
23 Agreement, which, according to Remodel, applies even to the 2018
24 telemarketing calls. (Plaintiff's Opp'n to Mot. To Dismiss at 5.)
25 Remodel's arguments are not persuasive.

26 First, Doane's actions did not constitute activity directed at
27 California. Doane visited a third party website one time and
28 provided his contact information so as to receive general inquiries

1 about a remodeling project in Massachusetts. (Compl. ¶ 12.) Remodel
2 does not allege that the third party website had any association
3 with California. Id. Nor is the fact that Doane sent a demand
4 letter to Remodel in California dispositive. Indeed, the Ninth
5 Circuit recently held that nonresident parties did not purposefully
6 direct actions at the forum state even when they commenced a civil
7 suit in the forum state. Morrill v. Scott Fin. Corp., 873 F.3d
8 1136, 1139-42 (9th Cir. 2017).

9 In Morrill, an Arizona lawyer represented condominium
10 developer plaintiffs in litigation in Nevada state court. The
11 Nevada defendants and their counsel allegedly harmed the Arizona
12 lawyer in retaliation for his representation of the Nevada
13 developer plaintiffs by, among other things, filing civil actions
14 in Arizona and issuing improper deposition subpoenas there, filing
15 a defamation action against the Arizona lawyer in Nevada state
16 court and serving him in Arizona, and filing a Nevada state bar
17 complaint against the Arizona lawyer. Id. at 1139-40. The
18 Arizona lawyer then sued the Nevada lawyer in the District of
19 Arizona, arguing that the Nevada lawyer purposely directed his
20 activities toward Arizona by making phone calls, sending e-mails,
21 and mailing documents to the Arizona lawyer in Arizona and filing
22 motions and making appearances in Arizona court. Id. at 1142-43.
23 The Ninth Circuit disagreed, holding that the Arizona district
24 court did not have personal jurisdiction over the Nevada lawyer
25 (and his co-defendants) because the Nevada lawyer's "very limited
26 communications and proceedings in Arizona" were "solely a by-
27 product of [the Arizona's lawyer's] residence[,]'" and had nothing
28 to do with Arizona itself. Id. at 1144-45. "[W]hen a defendant's

1 relationship to the forum state arises from the fortuity of where
2 the plaintiff resides . . . , it does not provide the basis for
3 specific jurisdiction there." Id. at 1148. Here, Doane's single
4 act of sending a demand letter to Remodel, which happened to reside
5 in California, was far more brief and attenuated than those of the
6 defendants in Morrill. For jurisdictional purposes, Doane did not
7 direct activity at California.

8 Second, for purposes of the instant action, Doane did not
9 avail himself of the benefits of California law by entering into
10 the Agreement because the Agreement does not control the
11 circumstances of this dispute. Remodel argues that even though the
12 telemarketing calls at issue here postdate the Agreement, the
13 Agreement controls because it provides that all claims relating to
14 the "subject matter" of the Agreement must be brought in
15 California. (Compl. ¶¶ 9, 18, 32-33; Ex. 1 at 3, § 5.) Remodel's
16 interpretation of the Agreement is not convincing.

17 Under the Agreement, Doane released all claims "that may have
18 been raised at any time through and up to the Effective Date of
19 this Agreement." California courts have a "strong and growing
20 distaste . . . for exculpatory release provisions releasing a
21 tortfeasor from liability for his or her future negligence or
22 misconduct." *Ferrell v. S. Nevada Off-Rd. Enthusiasts, Ltd.*, 147
23 Cal. App. 3d 309, 314 (1983). Under California law, "[t]o be valid
24 and enforceable, a written release exculpating a tortfeasor from
25 liability for future negligence or misconduct must be clear,
26 unambiguous and explicit in expressing the intent of the parties."
27 *Baker Pac. Corp. v. Suttles*, 220 Cal. App. 3d 1148, 1153
28 (1990) (noting that releases that waive liability for future

1 intentional torts are generally void as a matter of public policy
2 under Cal. Civ. Code § 1668). Here, the mere use of the term
3 "subject matter" hardly evinces Doane's unambiguous intent to
4 release future claims, particularly in light of the "effective
5 date" language. Furthermore, the Agreement provides for the
6 application of California law. California Civil Code Section 1542,
7 however, states that a "general release does not extend to claims
8 which the creditor does not know or suspect to exist . . . at the
9 time of executing the release." (Ex. 1 at 2, § 2.) The Agreement
10 does not contain a waiver of Section 1542.

11 Thus, nothing in the Agreement suggests that Doane intended to
12 release Remodel from any telemarketing-related claim in perpetuity.
13 Doane's demand letter did not reference the Agreement or invoke any
14 California law, but rather referenced only federal and
15 Massachusetts law. (Ex. 1.) As relevant to this dispute, Doane did
16 not purposely avail himself of the benefits of California law.

17 Because Doane neither directed activity at California nor
18 purposefully availed himself of the benefits of California law,
19 this Court does not have specific personal jurisdiction over him.

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1 **IV. Conclusion**

2 For the foregoing reasons, Doane's Motion to Dismiss is
3 GRANTED. Plaintiff's Complaint is DISMISSED for lack of personal
4 jurisdiction.

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8 IT IS SO ORDERED.

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11 Dated: July 31, 2018

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DEAN D. PREGERSON
United States District Judge